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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER

MADSEN, ROBERT A

ART UNIT	PAPER NUMBER
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1761

DATE MAILED: 12/08/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/914,311

Applicant(s)

WESJOHANN ET AL.

Examiner

Robert Madsen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-24 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). ____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) ____ 6) ☐ Other: ____

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2. Claims 1-24 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. Applicant has defined the recited "whole grown meat" as meat grown on the animal body with a particular anatomical predetermined shape such as a "fillet, steak, chop, brisket, leg portions, brisket fillet or another cut piece of meat" (See Page 2 of the Specification, paragraph 3). However, applicant states that the inventive technology does not rely on "comminuted or cut-up meat pieces" (see Page 4 of the Specification, first paragraph). In particular, claims 5 and 6 recite an "inner fillet" and fillet, which would both be described as a "cut piece of meat". Therefore, it is not clear to which types of meat the invention pertains (i.e. which types of meats are included or excluded from the recited term "whole grown meat").

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

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A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 1-3,7-10,13,23,24 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Clarke et al. (US 5690989). Examiner assumes that "alt" in line 2 of claim 7 and Page 5 of the specification is "salt".

5. See Column 1, lines 45-67, Column 2, lines 4-59, Column 3, lines 1-35, Column 5, lines 13-27 Example 1, the molds of Figures 5 and 6.

6. Claims 1-3,7,8,13,23,24 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Huffman (US 4258068). Examiner assumes that "alt" in line 2 of claim 7 and Page 5 of the specification is "salt".

7. See Column 2, line 67 to Column 3, line 13.

8. Claims 1-3,5,7-9,13-15,17,18,24 are rejected under 35 U.S.C. 102(e) as being clearly anticipated by Wiebe Jr. (US 5928690). Examiner assumes that "alt" in line 2 of claim 7 and Page 5 of the specification is "salt". Note Weibe Jr. clearly anticipates the claims with respect to the embodiment of "the restructured body ... are [is] gently pressed into a mold in order to assume a form corresponding to that of the mold". See Column 2, lines 15-31, Column 3, lines 13-42, and the Examples, wherein Example 1

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uses a chicken breast fillet. Also it is noted that the Formax forming machine is a notoriously well known plate freezer.

Claim Rejections - 35 USC § 103

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 4 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wiebe Jr. (US 5928690) as applied to claims 1-3,5,7-9,13-15,17,18,24 above, further in view of Jeppson et al. (US 3597228).

11. Wiebe Jr. teaches chicken fillets (Examples), but is silent in teaching young chickens. Jeppson et al. teach young chickens are tender but lack flavor, whereas older chickens have flavor and are tougher (Column 3, lines 3-6, Column 4, lines 1-5).

Therefore, to select a young chicken would have been an obvious matter of choice depending on the desired flavor and texture of the meat product since Jeppson et al. teach young chickens are tender, but lack flavor, whereas older chickens are flavorful, but are tough.

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12. Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Huffman (US 4258068) as applied to claims 1-3,7,8 , 13,23,24 above, further in view of Sheehy et al. (US 4680186).

13. Hoffman teaches using a slicer such as a power cleaver or similar device to cut the frozen meat, but is silent in teaching a band saw (Column 3, lines 10-13). Sheehy et al. are relied on as evidence that it was conventionally known that a band saw is a "similar device" to a power cleaver for cutting frozen meat (Column 2, lines 32-43).

Therefore, it would have been obvious to modify Hoffman and utilize a band saw since Sheehy et al. teach it is considered a similar device to a power cleaver and one would have been substituting one similar slicer for another for the same purpose: slicing frozen meat.

14. Claims 14-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Clarke et al. (US 5690989) as applied to claims 1-3,7-10,13,23,24 above, further in view of Minder (US 2673156) and Mally et al. (US 4716821).

15. Regarding claims 14,15,17-20, Clark et al. teach a sliced meat product of uniform size that is deep frozen and the process of forming improves the uniformity of the product and the overall meat structure over the prior art (Abstract, Column 1, lines 12-54), but are silent in teaching an eatable mass applied as a topping and frozen as recited in claim 14, comprising fruits/vegetables/sour cream/seasonings as recited in claim 15, placed on the meat in a refrigerated condition as recited in claim 17, such as 10-0°C as recited in claim 18, an additional mass placed on the first topping the mass is

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placed in a refrigerated condition of with cheese, herbs, or bread as recited in claims 19 and 20.

16. Like Clarke et al., Minder also forms meat slices by packing meat pieces into a mold, freezing the mold, slicing the frozen mold to provide a meat slice of uniform size and shape. Minder, also like Clarke et al., is concerned about improving the texture of the resulting structured meat product slices, and teaches the perceived texture may be improved by stacking the slices with another food slice interspersed between the meat slices (Column 1, lines 55, Column 3, line 25 to Column 4, line 14). Minder teaches it is well known to form layered steak products comprising molded meat product slice layers interspersed with layers items such as cheese that is frozen with the meat slice, as recited in claims 14, which contains fat as recited in 15, and wherein the subsequent alternating layers of cheese would be the topping on the first topping as recited in claim 19 and 20 (Column 1, lines 1-12, Column 2, lines 15-25, Column 5, lines 20-27, Column 5, lines 54-56).

17. Mally et al. are relied on as further evidence of the conventionality of layers of meat products slices, or patties, being interspersed with toppings, including cheese (Abstract).

18. Therefore, it would have been obvious to modify Clarke et al. and form a layered meat slice product with moisture and fat containing cheese interspersed between multiple meat layers as recited in claims 14, 15, 19, and 20, since Minder teaches this will further enhance a sliced meat product and Mally et al. teach the conventionality of layers of meat products slices being interspersed with toppings, including cheese. It

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would have been further obvious to place the cheese on the meat product in a refrigerated as recited in claim 17, such as 10-0°C as recited in claim 18, since Minder teaches cheese and cheese conventionally is stored at 0-10°C.

19. Regarding claim 16, Clarke et al. teach slices with uniform shape and density (Abstract), but are silent in teaching toppings that are weighed and chopped. Minder teaches the resulting product will provide a uniform shape, size and weight (Column 2, lines 4-15), and thus the cheese would be chopped (i.e. to a particular shape/size) and weighed to provide the uniformity. Therefore it would have been obvious to include weighed and chopped toppings since Clarke et al. requires uniform shape and density for the slices and Minder teaches a method of layering which achieves uniform shape, size, and weight, which would require weighing and chopping to obtain the desired features.

20. Regarding claim 22, Clarke et al. teach deep freezing the molded product and the slices, but is silent in teaching deep freezing the slices and/or toppings as recited in claim 22. Minder teaches once the multi-layer food product has been assembled it may be frozen at a temperature similar to the molding step (Column 5, lines 54-56).

Therefore, it would have been further obvious to freeze the multilayer food product, since Clarke et al. teach both the molded and sliced product are stored under deep freeze conditions and Minder teaches that a multilayer product formed with meat product slices is stored at the same temperature as the meat product molding temperature.

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21. Regarding claim 21, Clarke et al. are silent in teaching depositing a topping onto a sliced meat product using a filling machine. Minder teaches knitting the toppings/multilayers together. Mally et al, who also teach layers of meat products slices, or patties, being interspersed with toppings, including cheese (Abstract), teach an improvement over the method of Minder is using a filling machine to increase production rate and maintain a consistent quality and appearance of the multilayer product (Column 1, line1 to Column 2, line 62). Therefore, it would have been further obvious to modify Clarke et al. and complete the topping step by using a filling machine since Minder and Mally et al. both teach the conventional layering of meat product slices and toppings and Mally et al. teach using a filling machine will increase the production rate and maintain the product quality and appearance.

Conclusion

22. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Forkner (US 4282258) teaches a method of coating molded food products with breading, including animal products.

23. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert Madsen whose telephone number is (703)305-0068. The examiner can normally be reached on 7:00AM-3:30PM M-F.

24. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (703)308-3959. The fax phone number for the organization where this application or proceeding is assigned is (703)872-9310.

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25. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0061.

Robert Madsen
Examiner
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